

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Adoption of Regulation 18247.5 – Primarily Formed and General Purpose Committees

Date: December 26, 2008

Proposed Commission Action: Approve the adoption of Regulation 18247.5 which clarifies the statutory definitions of primarily formed and general purpose committees.

Summary: In essence, the regulation provides (1) that a committee is primarily formed if it makes more than 70% of its contributions or expenditures on a specific candidate or measure and (2) that a general purpose committee is a city, county, or state committee if it makes more than 50% of its contributions or expenditures on candidates or measures to be voted on in that jurisdiction. This regulation has been substantially revised from the version presented in October, in efforts to simplify it. We have combined the separate primarily formed and general purpose committee regulations into one, reflecting the interrelationship between these provisions.

Reason for Proposal: The goal of this regulation is to provide clear guidance as to when a committee is primarily formed versus general purpose, and when a general purpose committee is a state, city, or county committee. The Technical Assistance Division has for many years wanted to have more specific advice to give to committees concerning the definitions of general purpose and primarily formed committees. Committees frequently call the Commission to ask questions about whether they are a state or local committee, or what constitutes a primarily formed committee, and we do not have definitive guidance to provide them. We currently rely on the statutory definitions themselves and a 1997 Commission advice letter. (*Moll* Advice Letter, No. A-97-080.)

Background: *Primarily formed* committees are defined in Section 82047.5 of the Act (attached). They are committees that support: a single candidate or measure; two or more measures being voted on in the same state or local election; or a group of specific candidates being voted on in the same local election.¹ *General purpose* committees are defined in Section 82027.5 of the Act (attached). They are committees that support more

¹ A candidate's own committee for election to office is not considered primarily formed; it is considered a "controlled committee."

than one candidate or measure in successive elections, such as political action committees and political party committees.

The filing requirements of committees differ depending on what type of committee they are. For general purpose committees, it is important that they file campaign reports with the jurisdiction where they are most active – state, county, or city – in order for the public to access the reports and because different contribution limits or additional disclosure requirements may apply.

The distinction between a primarily formed and a general purpose committee is also important because primarily formed committees have heightened disclosure requirements. Committees primarily formed to support a candidate or a measure are *automatically* required to file two preelection statements, 40 and 12 days before the election.² Additional late reporting applies to primarily formed committees during the period before the election.³ (Sections 84200.5 and 85309.)

In addition, whether a committee is primarily formed or general purpose has consequences for ballot measure committees. The Act's advertisement disclosure provisions apply only to primarily formed ballot measure committees, not to general purpose ballot measure committees.⁴ These provisions require an advertisement for or against a ballot measure to list the top two donors of \$50,000 or more. (Section 84503 and Regulation 18450.1.) The name identification provisions, requiring a ballot measure committee to identify the economic or other special interest of its top \$50,000 donors, also apply only to primarily formed committees. (Section 84504 and Regulation 18450.3.)

² These preelection reports show the money the committees have spent on the candidate or measure, the cash on hand that may be spent on the candidate or measure, and the sources of these funds. General purpose committees must also file two preelection statements preceding a state, county, or city election, if they have spent \$500 on that election during the period covered by the statement. (Section 84200.5(d)-(g).) However, there have been cases where a general purpose committee has raised substantial contributions for an election but not spent or contributed anything until very close to the election, resulting in no disclosure of the sources of the funds before the election. This situation has partially been remedied in the case of independent expenditures, where late reports of independent expenditures require disclosure of contributions coming in that were used to make the independent expenditure, but the problem still exists for contributions made by a general purpose committee very close to the election.

³ Primarily formed committees must file 497 Contribution Reports for all contributions of \$1,000 or more received during the 90-day election cycle (for state electronic filers) and 16-day late period preceding an election. General purpose committees, other than political party committees, are not required to file these reports of contributions coming in before an election. However, both primarily formed committees and general purpose committees are required to file Form 496 Independent Expenditure Reports if they make an independent expenditure to support or oppose a candidate or measure during the 90-day election cycle (for state electronic filers) and the 16-day late period preceding an election. (Sections 85500(a) and 84204; *Californians for Fair Representation – No on 77 v. Superior Court*, 138 Cal. App. 4th 15, 41 Cal. Rptr. 3d 148 (Cal. App. 3d Dist. 2006).)

⁴ The case *California Republican Party; California Democratic Party v. FPPC*, 2004 U.S. Dist. LEXIS 22160 (E.D. Cal. October 27, 2004) established that related advertisement disclosure provisions requiring the top two donors to ballot measure committees to be listed on broadcast ads do not apply to political party committees which are general purpose committees.

Proposed Regulation 18247.5 Primarily Formed and General Purpose

Committees: Interpreting Section 82047.5, this regulation provides that a committee is considered to be “primarily formed” to support or oppose a candidate or measure (or measures in the same election or group of local candidates in the same election) if it makes *more than 70 percent* of its total contributions and expenditures on behalf of the candidate or measure.

The proposed regulation requires committees to calculate whether more than 70 percent of their expenditures are for a particular candidate or measure at the end of each calendar quarter. (Proposed Regulation 18247.5(c).) To calculate the percentage, the committee counts contributions and expenditures made to support or oppose candidates or measures during the current and previous two calendar years. (Proposed Regulation 18247.5(c).) A primarily formed committee will count its expenditures on Schedule E made to support or oppose candidates and measures.⁵

Interpreting the definition of general purpose committee in Section 82027.5, this regulation sorts committees into “state,” “county” or “city” level based on their political activity. To categorize the committees, the regulation examines the expenditures made by a committee to support state, county or city candidates. A general purpose recipient committee will count its contributions and independent expenditures supporting other candidates and measures reported on Schedule D, and other expenditures reported on Schedule E made to support candidates or measures such as payments to a consultant for work on a measure, or expenditures for member communications supporting or opposing a candidate or measure.

The regulation provides that if more than half of a committee’s activity is on state candidates and measures, then the committee is a “state” general purpose committee, filing reports with the Secretary of State. (Proposed Reg. 18247.5(b)(1).) Similarly, if more than half of a committee’s activity is at the county or city level, then the committee is a “county” or “city” general purpose committee, respectively, filing with the county or city clerk. (Proposed Reg. 18247.5(b)(2) and (b)(3).)

In addition, if a general purpose committee makes \$50,000 or more in expenditures on state candidates and measures, it is categorized as a “state” committee and required to file at the state level. (Proposed Reg. 18247.5(b)(1).) This ensures that even a committee that is very active on a local level, with state activity under the 50 percent threshold, will still be considered a “state” committee and file electronic reports with the Secretary of State, if it spends \$50,000 or more on state candidates and measures. Following the statute, political party committees and their central committees

⁵ For purposes of the audit selection criteria under Sections 90001 and 90002, Regulation 18992 defines committees primarily formed to support or oppose a particular candidate or measure to mean a committee (other than a controlled committee) that has made more than one half of its expenditures on behalf of the candidate or state ballot measure for the period to be audited. The period to be audited generally covers four years for a committee supporting or opposing statewide and Senate candidates, and includes all campaign statements filed by a committee in connection with a measure.

are defined as “state” general purpose committees and required to file at the state level. (Section 82027.5(b) and Proposed Reg. 18247.5(b)(1)(B).)

Enacting this regulation will help keep committees whose activity is focused on the city and county level filing at the local level. Under current advice, if a local general purpose committee makes several contributions to the State Assembly member from the district (anything other than a de minimis contribution), that committee changes status to a “state” committee. (*Moll* Advice Letter, No. A-97-080.)

In addition, paragraph (c)(2) was added to the regulation concerning major donor and independent expenditure committees. Individuals, corporations, and other entities who are major donors or make independent expenditures from their own funds are characterized as general purpose committees under the Act. (Section 82027.5) This regulation will also assist these individuals and entities in knowing whether to file their disclosure reports at the state, county or city level.

Recommendation: Staff recommends that the Commission approve Regulation 18247.5 interpreting the statutory definitions of primarily formed and general purpose committees. This regulation will provide practical assistance to political committees in knowing the appropriate disclosure reports to file and where to file them. If adopted by the Commission, Regulation 18247.5 will be effective after filing with Office of Administrative Law and with the Secretary of State, approximately two months from the January 15 date. The regulation would first be applied by committees for the calendar quarter ended March 31, 2009.

Attachments:

- 1 – Proposed Regulation 18247.5
- 2 – Sections 82027.5 and 82047.5